

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA A. EASON and DEPARTMENT OF HEALTH & HUMAN
SERVICES, HEALTH RESOURCE SERVICES ADMINISTRATION,
Rockville, MD

*Docket No. 02-897; Submitted on the Record;
Issued September 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or after November 1, 2000 causally related to her June 21, 1999 employment injury.

On July 8, 1999 appellant, then a 38-year-old program analyst, filed a notice of traumatic injury alleging that she sustained multiple injuries on June 21, 1999 when she fell eight feet to the ground while assembling an exhibit booth at work. The Office of Workers' Compensation Programs accepted the claim for contusions of the left ankle, right knee and right shoulder. Appellant was off work from June 21 to July 8, 1999, when she returned to full duty.

On January 8, 2001 appellant filed a Form CA-2a claim for a recurrence of disability. She stated that her recurrence of disability began November 1, 2000. Appellant noted that she stopped work from December 7 to 12, 2000.

In a March 20, 2001 letter, the Office notified appellant of the factual and medical evidence required to establish her claim for a recurrence of disability.

Appellant submitted several medical reports and office notes from Dr. Wesley Mason, a family practitioner and her regular physician.

In a report dated April 17, 2001, Dr. Mason noted that appellant's shoulders and ankles had returned to normal range of motion as of August 17, 2000 such that appellant had been able to return to work and was doing well except for mild soreness of the left knee. He stated that he next saw appellant for a general physical examination in September 2000 at which time she reported some knee and ankle discomfort but was able to function. Appellant then related that, in December 2000, she had been examined by another physician, Dr. Laurie Duncan, who had recorded a history of pain in the ankles and feet, "which seemed to be related to walking on hard pavement for two weeks. Exam[ination] showed swelling of the left ankle ... there was tenderness of the right foot in the arch. Diagnosis was foot and ankle strain related to activity

described with metatarsalgia and possible plantar fasciitis. She was referred to physical therapy for instructions and orthotics.” Dr. Mason indicated that appellant had been seen by a podiatrist, Dr. Chatlin who examined her on April 11, 2001 and diagnosed heel spur syndrome with plantar fasciitis. Dr. Mason concluded his report as follows:

“...I believe that she had a significant injury in 1999 which left some residual discomfort in the knees and ankles. Her current, more intense symptoms, involving the feet and ankles are probably a new condition that may be partially related to the prior injury but not completely. Plantar fasciitis is a common condition which can develop regardless of prior injury. Ankle sprains may leave the ankle vulnerable to repeat injury later.”

In a decision dated May 16, 2001, the Office denied compensation on the grounds that the evidence was insufficient to establish that appellant sustained a recurrence of disability causally related to her accepted employment injury.

On June 14, 2001 appellant requested a hearing, which was held on October 16, 2001.

At the hearing, appellant submitted a supplemental report from Dr. Mason dated June 26, 2001 which stated as follows:

“I am writing at the request of [appellant] with addition information about her injury and subsequent problems. Review of our record shows that her original injury was on June 21, [2001] and her first visit to one of our clinics was on June 27, [2001]. Subsequently she was treated five times in physical therapy through September 2, [2001]. Pain in the back on the heels and tingling in the feet was mentioned during this time period but the major symptoms recorded were in the right shoulder, right wrist [forearm] and hand, knees, ankles, and left foot. When she was seen in December 2000, she had ankle and foot pain as noted in my first letter and was later found to have plantar fasciitis. With musculoskeletal problems, the causes are often multiple and several things can contribute. Thus, her original fall may have left her feet and ankles more prone to develop future problems such as the plantar fasciitis later diagnosed. We cannot be certain that there is no relationship between her injury and all subsequent problems, just as we cannot be certain that one definitely was the main cause of the other. From the medical point of view, it would be impossible to distinguish foot and leg problems developed later on after a known injury from those that developed with no history of an injury. Certainly her fall and injury could easily have been one of the causes of her later symptoms in the same part of the body. I just could not say that the relationship is 100 percent.”

In a decision dated January 3, 2002 and finalized on January 7, 2002, an Office hearing representative affirmed the Office’s May 16, 2001 decision.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on or after November 1, 2000 causally related to her June 21, 1999 employment injury.

As used in the Federal Employees' Compensation Act,¹ the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.² An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relationship.⁵

In this case, appellant contends that she continued to have foot problems following her work injury although she returned to her regular employment. She alleges that in November 2000 she experienced increased foot pain and was diagnosed with plantar fasciitis, which requires the use of orthotics and massage and aquatic therapy to ease the pain. The diagnosis of plantar fasciitis has been confirmed by Drs. Mason and Chatlin but neither physician offered an opinion to causally relate the condition to appellant's work injury. Dr. Mason suggested in his April 17, 2001 report that appellant's foot problems were likely due to walking on pavement at work. In subsequent reports, he stated that appellant's work injury "may have left her feet and ankles more prone to future problems such as plantar fasciitis" but acknowledged that it was possible that her foot condition would have developed regardless of the work injury. Thus, he was unable to offer an opinion with any medical certainty as to the cause of appellant's diagnosed foot condition.

It is appellant's burden of proof to establish that she sustained a recurrence of disability. In the absence of reasoned medical opinion to causally relate appellant's disability on November 1, 2000 to the June 21, 1999 work injury, appellant has failed to establish that she sustained a recurrence of disability. Because appellant failed to carry her burden of proof, the Office properly denied her claim for compensation.

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Eldon H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.57(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of the injury, has no disability as that term is used in the Act and is not entitled to disability compensation; see *Gary L. Loser*, 38 ECAB 673 (1987); *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

³ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁴ *Jose Hernandez*, 47 ECAB 288 (1996).

⁵ *Ausberto Guzman*, 25 ECAB 362 (1974).

The decision of the Office of Workers' Compensation Programs dated January 3, 2002 and finalized on January 7, 2002 is hereby affirmed.

Dated, Washington, DC
September 3, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member